

Adjustment of Status Summary

I. Issues Decided by CIS (Before) Merits Hearing with IJ

- Adjudication of the visa petition
 - Eg. Form I-130 (family-based)
 - Form I-140 (employment-based)
 - Form I-360 (special immigration juveniles, VAWA self-petitioners, etc.)

II. To Adjust before the IJ (INA § 245(a))

- Visa must be immediately available (immediate relative or priority date is current)
- Respondent must have inspected entry or be grandfathered under 245(i)
(exception: special immigrant juveniles, VAWA self-petitioners, and some parolees)
- Background Checks Complete
- Current Medical Exam in Sealed Envelope
- Affidavit of Support or I-864W (in family-based cases)

III. Must not be ineligible under INA § 245(c)

- No unauthorized work or lack of valid non-immigrant status (exception: immediate relatives, special immigrant juveniles, and VAWA self-petitioners)

IV. Must be Admissible

- If inadmissible under INA § 212(a), must qualify for a corresponding waiver:

Eg.

If conviction for Crime Involving Moral Turpitude, other crimes under INA § 212(a)(2)(A)(I), (II), (B), (D), (E), or simple possession of 30 g or less of marijuana only:	THEN NEEDS	Sec. 212(h) waiver: <ul style="list-style-type: none">- Must have parent, spouse, son or daughter of USC or LPR and extreme hardship or- 15 years since crime and rehabilitation
If fraud or misrepresentation under 212(a)(6)(i):	THEN NEEDS	Sec. 212(i) waiver: <ul style="list-style-type: none">- Must have USC or LPR spouse or parent and extreme hardship
If unlawful presence under section 212(a)(9)(B)(i):	THEN NEEDS	Sec. 212(a)(9)(B)(v) waiver: <ul style="list-style-type: none">- Must have USC or LPR spouse or parent and extreme hardship

V. Discretion

- Once statutorily eligible, IJ must determine whether to grant in the exercise of discretion, balancing the positive factors versus the negative factors. Matter of Arai, 13 I&N Dec. 494, 496 (BIA 1970).

Note: Juveniles and VAWA self-petitioners do not need inspected entry or affidavit of support and are not subject to the same grounds of inadmissibility. More generous rules apply.